No. 629.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

THE UNITED STATES OF AMERICA,
Appellant,

v.

PHILIP LEPOWITCH and MARVIN SPECTOR,
Appellees.

On Appeal from the District Court of the United States for the Eastern District of Missouri, Eastern Division.

APPELLEES' PETITION FOR REHEARING
and
SUGGESTIONS IN SUPPORT.

HENRY S. JANON,
Attorney for Appellees.

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APPELLEES' PETITION FOR REHEARING.

To The Honorable The Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Come now petitioners Philip Lepowitch and Marvin Spector, appellees in the above entitled proceeding, and petition this Court to grant them a rehearing, and as grounds therefor, petitioners respectfully represent:

1. The judgment, decision and opinion of this Court is erroneous, and manifested a misapprehension and misunderstanding of the law in the case, in the following respects, to-wit:

(a) That portion of the Court's opinion, to-wit:

> "We hold that the words 'intent to defraud' in the context of this statute, do not require more than the defendants have, by artifice and deceit, sought to cause the deceived person to follow some course he would not have pursued but for the deceitful conduct".

is contrary to the manifest intention of Congress in enacting the statute in question, and in using the words "intent to defraud" therein.

(b) That portion of the Court's opinion, to-wit:

> "The first clause of this statute, the only one under consideration here, defines one offense; the second clause defines another. While more than mere deceitful attempt to affect the course of action of another is required under the second clause of the statute, which speaks of an intent to obtain a 'valuable thing', the very absence of these words of limitation in the first portion of the act persuade us that under it, a person may be defrauded although he parts with something of no measurable value at all".

is erroneous, and is based on a misunderstanding of the statute, and upon an erroneous analytical comparison of both clauses thereof.

(c) That portion of the Court's opinion, to-wit:

> "In any case, this branch of the statute covers the acquisition of information by impersonation although the information may be wholly valueless to its giver. This result is required by United States v. Barnow, supra, 80, in which we held that the purpose of the statute was 'to maintain the general good repute and dignity of the (government) service itself', and cited with approval cases which, interpreting an analogous statute, said: 'It is not essential to charge or prove an actual financial or property loss to make a case under

the statute.' Haas v. Henkel, 216 U. S. 462, 480; United States v. Plyler, 222 U. S. 15".

is not applicable to the case at bar, nor to the statute in question, and the analogy made therein is erroneous.

(d) The Court encroached upon the legislative powers of Congress, by distorting the meaning of the statute and effectually amended and re-wrote same.

(e) That portion of the Court's opinion, to-wit:

> "The District Judge sustained a demurrer to the indictment, holding that the conduct of the defendants, 'while highly reprehensible, does not come within the terms of the statute'. He apparently concluded that the count of the indictment under consideration did not, within the meaning of the statute, make sufficient allegations either of impersonation or of acting with intent to defraud".

is an erroneous statement of the jurisdictional basis for review by this Court, but rather, the jurisdiction of this Court should have been based on the following portion of the District Court's opinion, to-wit:

> "The action of the defendants, in their false and pretended character of Federal Bureau of Investigation agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not in my opinion taking upon themselves to act as Federal Bureau of Investigation agents". (R. 6)

and this Court assumed and exercised unwarranted jurisdiction in this case, over and beyond the strict limitations of the Criminal Appeals Act.

WHEREFORE, the premises considered, appellees pray this Court to grant them a rehearing.

HENRY S. JANON,
Attorney for Appellees.

Certificate of Counsel.

I hereby certify that this Petition for Rehearing is not presented for the purpose of delay, but is presented in good faith for the reasons mentioned therein.

HENRY S. JANON,
Attorney for Appellees.

SUGGESTIONS IN SUPPORT OF APPELLEES' PETITION FOR REHEARING.

1.

Appellees are completely shocked by the Court's decision. The opinion and the reasoning used by the Court to sustain its decision in this case, are so palpably fallacious, that we prefer to attribute that to the undue haste with which this Court acted in writing its opinion in this case.

Appellees have the utmost respect for this Court, but we realize that the members thereof are mere human beings and subject to the frailties of the flesh, including that of falling into error. If we should seem somewhat impolitic in criticising what to us appears to be an error of the Court, we confess that our limited talents do not include the ability to express criticism in the silky language of the diplomats who "fritter away weighty matters with niceties of words".

We believe with every fiber in our bodies that the Court has made a grievous error in its decision and opinion in this case, and we aver that this petition is not filed as a mere perfunctory routine. We naively believe that if the Court should be satisfied that it has erred in this case, that it will grant appellees a rehearing.

(a) **The Intention of Congress With Respect to the "Intent to Defraud".**

(b) **Analysis of Both Clauses of the Statute.**

Because points (a) and (b) are necessarily bound up with each other, we felt it preferable to join them together in the argument.

Under our system of government, the power to make laws is vested exclusively in Congress, and the function of the Court is to construe or interpret the law, as enacted by

Congress. Since it is the Act of Congress that is to be construed or interpreted, the duty of the Court is to ascertain the intention of Congress in enacting the law, and such intention determines the construction or interpretation of the law.

The statute in question was originally offered in Congress in 1883 but was finally enacted in 1884, and we must needs recur to the history of the times, to ascertain what was the intention of that Congress in enacting this statute. The legislative history reports that pension claimants were being cheated and blackmailed by prowling bandits who falsely posed as federal officers (15 Cong. Rec. 2256, 48th Cong. 1st sess.). In that state of condition, two bills were offered in Congress, one on February 24th, 1883, making it a misdemeanor to merely impersonate a federal officer and act as such (S. 2506, 47th Cong. 2nd sess., 14 Cong. Rec. 3239), and the other on February 26, 1883, making it a felony to (1) impersonate a federal officer and do an overt act for the purpose of defrauding another, or, (2) impersonate a federal officer and in such pretended character, demand or obtain money, paper, document or other valuable thing (C. 2507, 47th Cong. 2nd sess., 14 Cong. Rec. 3263). The misdemeanor bill died an ignominious death, whereas the felony bill passed the Senate, but did not reach the House before Congress adjourned sine die (15 Cong. Rec. 1285). In the next session of Congress (48th Cong. 1st sess. 1884), the felony bill was again offered and passed both Houses of Congress in rapid order and was signed by the President on April 18, 1884 (15 Cong. Rec. 3368).

The felony bill (now Title 18 U. S. Code, Sec. 76) is in two clauses, the first clause thereof was addressed to criminal activities of a basically fraudulent nature, and used the apt legal words "with intent to defraud" to describe and embrace such fraudulent activities which include embezzlement, so-called larceny by trick and others of a basically fraudulent nature. The second clause on the

other hand, was addressed to criminal activities of an affirmative nature not basically fraudulent, and used the apt words "demand or obtain" to describe and embrace affirmative criminal activities of a nature not basically fraudulent and which do not fall within the definition and meaning of "defraud" (See Fasulo v. United States, 272 U. S. 620, 628; Hammerschmidt v. United States, 265 U. S. 182, 188), such as extortion, robbery, burglary and larceny (if it is legally possible for an impersonator to rob, burglarize or larceniously "demand or obtain" a thing "in such pretended character", on which query we express no opinion) and is not violative of the first clause. (As an aside, we might say that every such demand or obtainment in the pretended character of a federal officer is a demand or obtainment under color of the pretended office, and constitutes an extortion.) The two clauses and the offenses created therein do not overlap each other; they are alternative clauses each mutually excluding the other, and artfully designed to reach every impersonator who uses the false pose to get or seek to get a thing from the victim.

It should be noted that the first clause specifically uses the words "with intent to defraud", whereas the second clause specifically omits any reference to those words. If Congress had desired to make the two clauses and the offenses created thereby inter-related (as this Court seemed to think), it would have been a simple matter for Congress to have said:

> "or shall in such pretended character, **and with such intent**, demand or obtain" etc.

But to do so would make the second clause an atrocious absurdity, because, to defraud is not to extort, and to extort is not to defraud (Fasulo v. United States, supra, 628). The very idea of defraudment is to get or seek to get a thing by misplaced confidence, cheat, swindle, chicanery, trickery or some surreptitious manner (Hammerschmidt

v. United States, supra, 188). Whereas, the very idea of extortion is to demand or obtain a thing by brazenly bold demands, threats, force, torture, coercions, violence, intimidation or the like. Defraud is the very antonym, the very antithesis of extortion; the one denotes beguilement, the other denotes brazenness. This Court in the case of Fasulo v. United States, supra, 628, recognized the irreconcilable difference between defraudment and extortion, and held that the using the mails to defraud statute (18 U. S. C. 338) was not violated by one who used the mails to blackmail or extort money from another.

Let us examine why Congress chose the particular words used in each clause to designate separate offenses, and what it sought to accomplish thereby. This Court correctly stated the elements that comprise the first clause as,

> "impersonation of an officer of the government and acting as such with intent to defraud either the United States or any person".

The crime is completed when the impersonator acts with the intent to defraud another. The act is the overt step taken by the offender to put into execution his intention to defraud. The offense is complete and the first clause of the statute is satisfied whether the act accomplished its purpose and the victim actually defrauded, or whether the act failed of accomplishment, or whether the offender was apprehended in the act before the victim was actually defrauded. In creating the defraud clause, Congress aptly used the words "with intent to defraud" and followed same with the words "act as such" i. e. act to defraud in the pretended character, to embrace every conceivable method or means used in defrauding or attempting to defraud another.

The defraudment clause of the statute being complete, Congress then turned to the business of writing the second clause. It must be assumed that Congress knew the differ-

ence between defraudment and extortion, and that it also knew that an extortionist could not be convicted under the defraudment clause of the statute. See Fasulo v. United States, supra, 628, where it was said:

> "But broad as are the words 'to defraud' they do not include threat and coercion through fear or force."

In writing the second clause, Congress purposely omitted the words "with intent to defraud" or any reference thereto. It could be no part of the second clause without mutilating it. Congress aptly used the words "demand or obtain" in the second clause to embrace the criminal activities not described in the first clause. Defrauders do not "demand"; they are subtle confidence men, and a demand by them would convert their offense from that of defraudment to that of extortion.

And if it should be asked, Why did Congress make false impersonation of a federal officer a requirement of both, the first and second clauses of the statute if the very nature of their offenses are so incompatible? our answer is that Congress would have no constitutional power to enact a police law, unless such law related to some governmental function. Congress clearly had the power to prohibit false impersonation of its officers, and it could likewise prohibit such false impersonation for improper purposes. If the statute or either clause thereof had omitted the requirement of such false impersonation, the statute or clause omitting same would be clearly unconstitutional, as an attempted encroachment upon the sovereign right of the state to police its own citizens.

The last paragraph of the opinion of the Court, in which this Court undertook to summarize its analytical comparison between the first and second clauses of the statute, seems to have been the persuasive cause for the decision of the Court. Such paragraph of the opinion reads as follows:

"The first clause of this statute, the only one under consideration here, defines one offense; the second clause defines another. While more than mere deceitful attempt to affect the course of action of another is required under the second clause of the statute, which speaks of an intent to obtain a 'valuable thing', the very absence of these words of limitation in the first portion of the act persuade us that under it, a person may be defrauded although he parts with something of no measurable value at all".

We submit that the analysis is wrong, the comparison is wrong, and the reasoning is wrong. As demonstrated above, the first clause is a defraudment statute, pure and simple, and the words "intent" or "intent to defraud" are no part of the second clause. The first clause denounced any act aimed to defraud another, whether the defraudment was accomplished or not accomplished. There was no need for Congress to recite in the defraudment clause what specific items the defrauder must get or seek to get, because the very use of the word "defraud" was tantamount to a recital in such clause of the specific items of which a person can be defrauded. It meant then, it means now, and since its earliest days it meant causing a person a pecuniary or property loss by artifice or trick. See Hammerschmidt v. United States, supra, 188; United States v. Cohn, 270 U. S. 339, 346. It would have been pure surplusage for Congress to define or break-down the word "defraud" in the statute, because it is a commonplace word, and has a uniformly accepted meaning both in the English language and at common law. It might well be, as a pure academic query, that if the word "defraud" did not have a definite, well-defined meaning, that the first clause of the statute would likely be held invalid for indefiniteness. So, we conclude that the first clause of the statute created within itself a complete and definite offense, requiring no reference to or assistance by other

clauses or statutes to make it completely definite and certain.

This Court seemed to think (and based its decision on such thought) that because the second clause specifically required that the offender demand or obtain "money, paper, document, or other valuable thing", that the omission of such specification of concrete things in the first clause impliedly meant that mere abstract things not so specified, was contemplated by the first clause. That reasoning was based on the false premise that the first and second clauses were inter-related, overlapped and embraced the same offense, and that the test whether an offender fell within the first or second clause of the statute, depended upon the thing he got or sought to get. The Court reached the conclusion that if he demanded or obtained money, paper, document or other valuable thing, he automatically fell within the second clause, and if he got or sought to get a thing not so specified in such second clause, he automatically fell within the first clause of the statute. It is clear that the two clauses set up two separate offenses, the very nature and character of each being entirely different from the other, so that proof of a surreptitious act to defraud wherein the impersonator neither demanded or obtained a thing is not an offense under the second clause, and proof of a demand of money or property in the false pose is not an offense under the first clause (Fasulo v. United States, supra), and that attempt to ally the clauses was improper.

The reason why Congress specifically recited a list of things in the second clause and made no specification at all in the first clause, is obvious. In the first clause Congress made it an offense to do an act "with intent to defraud" another, i. e., cause or attempt to cause such person a pecuniary or property loss (Hammerschmidt v. United States, supra, 188; United States v. Cohn, supra,

346), and the mere use of the word "defraud" in the first clause, because of its uniformly accepted meaning in the English language and at common law, was tantamount to a specific statement that the offender must cause the victim a pecuniary or property loss. The word "defraud" was not used nor referred to nor was it in anywise related to the offense described in the second clause, and consequently in the second clause, this definitive advantage is absent.

In the second clause the impersonator is required to "in such pretended character demand or obtain" WHAT? And unless at that point in the statute Congress specified exactly what was to be demanded or obtained by the impersonator, the description of the offense would be incomplete. And it is no accident that the very things specified in the second clause are the very same things contemplated by the first clause, by merely using the word "defraud" therein. That is why the second clause contained an affirmative specification, and the first clause did not.

If the Court's opinion is permitted to stand, there is presented this absurdity: If an impersonator should seek to elicit information from one person concerning the whereabouts of another, or the time of day, or the location of the court-house, or the condition of the weather, in a surreptitious manner, he is guilty of the first clause, but if he should demand or obtain such information by means of threats or force, he would not be guilty of the first clause (Fasulo v. United States, supra, 628), and because such information is not "money, paper, document or other valuable thing", he would not be guilty of the second clause of statute. The blackmailer or extortionist would be thus freely permitted to ply his nefarious trade.

An additional and really serious absurdity also appears: If an impersonator should arrest a person and detain him of his liberty against his will, or should search such per-

son, or should search his building, he will have violated Title 18 U. S. Code, Sec. 77, now Sec. 77a, a misdemeanor punishable at not more than one year in jail. Yet that impersonator certainly caused

> "the deceived person to follow some course he would not have pursued but for the deceitful conduct"

and, according to the decision and opinion of this Court in this case, would also violate the statute in question, a felony punishable at not more than three years imprisonment. By his one and the same conduct, he will have violated both statutes, one a misdemeanor and the other a felony. Applying the rule of merger of offenses in criminal law, which provides that, where the same criminal act constitutes both a felony and a misdemeanor, there is a merger of the two offenses, the misdemeanor being merged in the felony and the offense becomes punishable as a felony (22 C. J. S. [Criminal Law] Sec. 10, pp. 61, 62; 16 C. J. [Criminal Law] Sec. 10, p. 59; 8 R. C. L. [Criminal Law] Sec. 4a, p. 54; Bellande et al. v. United States, 25 F. [2d] 1, 2 [5 C. C. A.], cert. den. 277 U. S. 607), the violator of the misdemeanor statute (18 U. S. C. 77a) would be punishable under the felony statute (18 U. S. C. 76). And an anomalous situation is presented in those cases where persons have violated the misdemeanor statute (18 U. S. C. 77a) prior to April 19, 1943 (the date of the filing of the opinion in this case) and who now find themselves subject to an increased punishment. Their cry of ex-post-facto law will fall on deaf ears because that is applicable to the lawmakers—Congress—and not to the Courts. If the decision and opinion of this Court is permitted to stand, it will result that Title 18 U. S. Code, Sec. 77a has been judicially amended from a misdemeanor to a felony, and the punishment increased from 1 year to 3 years imprisonment. And all this without so much as a nod from Congress.

The decision of this Court was grounded on the fact that since the second clause spoke of a "valuable thing", the very absence of such words in the first clause meant that a person can be defrauded of an item that is not a "valuable thing." We have demonstrated beyond cavil that the test of which clause an impersonator violates depends on the nature and character of his actions, and not on what he got or sought to get. Since the Court founded its analysis on a false premise, its conclusion was erroneous, and it is respectfully submitted that in the interests of justice, this case be reviewed anew, and appellees granted a rehearing.

(c) Defraud Without Pecuniary or Property Loss.

The opinion of the Court seemed to place undue emphasis on the fact that in United States v. Barnow, 239 U. S. 74, 80, it was said that the purpose of the statute was "to maintain the general good repute and dignity of the (government) service itself", and approvingly cited (Haas v. Henkel, 216 U. S. 462, 480; United States v. Plyler, 222 U. S. 15) cases construing Title 18 U. S. Code, Sec. 88. In the Barnow Case, supra, the constitutionality of the statute was questioned and the statement was made to show that the statute related to a legitimate governmental function, and was within the powers of Congress. Naturally, if the purpose of the statute was to discourage defrauders and extortionists, the statute would be beyond the powers of Congress, and unconstitutional. However, the fact that a case falls within the purpose of the statute does not render it a violation thereof, unless it also falls within the language thereof (Sarlls v. United States, 152 U. S. 570, 575).

We might make the observation that none of the decided cases construing the statute in question should be given too much weight, because they seem not to have quite fully understood the statute. Even the Solicitor General in his

brief and in his argument in this case, insisted on the strength of the Barnow case, supra, that the words "act as such" meant acting in keeping with the false pretense, rather than as this Court rightly held in this case, as acting in the false pose with the intent to defraud. The Courts seem not to have given the statute and the two clauses thereof analytical study, and to rely on such cases as authority, is to lean on a broken staff.

Cases construing Title 18 U. S. Code, Sec. 88 (conspiracy to defraud the United States), are as remote in principle from the case at bar, as is a hog from a goose. Rather, the distinctions made in those cases between the meaning of the word "defraud" in the conspiracy statute (18 U. S. C. 88) and in other federal penal statutes, make them persuasive authority for appellees' position. See Hammerschmidt v. United States, supra, 188; United States v. Cohn, supra, 346.

If it will not be considered presumptuous of us, we wish to say as an aside, that we always felt that the cases which defined the word "defraud" in the conspiracy statute (18 U. S. C. 88) as meaning the interference with or obstruction of a lawful governmental function of the United States by deceitful means, arrived at the right result but through a wrong reason. When the word "defraud" was used by Congress in that statute it meant exactly what the word always meant, i. e., to cause a pecuniary or property loss by deceitful means. There was no occasion for the Court to give it an unnatural meaning. The Court might well have reasoned that there is a vast difference between the status of a person and that of a government, and that since governments exist for the purpose of administering affairs of state, what may properly be a property right of a government, may not be a property right of a person. The United States has a lawful right to insist that its lawful governmental functions be orderly exercised, and such

lawful right is a property right to the United States. It results that to interfere with or obstruct the government's lawful right to the orderly execution of its legitimate function, is an impingement on its property right, productive of a property loss and violative of the statute. Thus, we simply declare what was always the law anyway, without unnecessarily distorting the word "defraud" and give it a so-called secondary meaning.

(d) **Encroachment Upon the Powers of Congress.**

By the Constitution of the United States the exclusive right to legislate is vested in Congress, and the judiciary is prohibited from encroaching thereon. Where the judiciary is required to construe or interpret an Act of Congress, its function is to ascertain the intention of Congress and when ascertained, such intention determines the construction or interpretation of such statute. Courts should meticulously avoid super-imposing its own ideas as to what the law ought to be, for judges are not law-makers. Some few principles of statutory construction have been laid down by the Courts to guide it within the narrow lane that leads to the Congressional intention. Straying beyond such lane usually leads the Court to a mirage, and results in distorting the statute beyond the intended meaning of Congress.

These rules of statutory construction include, among others, the principle that penal statutes are to be construed strictly against the Government and in favor of the accused. It includes too, the salient principle that the Court must not judicially amend or re-write the law as it may deem necessary for the best interests of the nation and the people. And the fact that a state of war exists between this nation and its foes, is no license for the Court to judicially amend or re-write statutory law to befit the exigencies of the times. If the law need amending, Con-

gress has ample power to do so. It is at a time like this, when our spirit of patriotism overflows and influences our every action, that we must be extraordinarily judicious and not allow the foundation of our democratic principles to be sloughed away. We are attracted to the forthright expression appearing in Minor v. Happersett, 88 U. S. 162, 178:

> "If the law is wrong, it ought to be changed; but the power for that is not with us. The arguments addressed to us bearing upon such a view of the subject may perhaps be sufficient to induce those having the power, to make the alteration, but they ought not to be permitted to influence our judgment in determining the present rights of the parties now litigating before us".

Appellees feel that this Court has mis-interpreted the word "defraud" in the statute in question, and has accordingly distorted the meaning of the statute beyond the Congressional intention, as to be tantamount to a judicial amendment of the statute.

(e) The Jurisdiction of This Court.

It is our view that this Court assumed and exercised unwarranted jurisdiction in this case. We allude to the principle laid down by this Court in the case of United States v. Borden Co., 308 U. S. 188, 207, where it is said:

> "For it is well settled that where the District Court has based its decision on a particular construction of the underlying statute, the review here under the Criminal Appeals Act is confined to the question of the propriety of that construction."

In the case at bar, the District Court sustained the demurrer for the specific reason that:

> "The action of the defendants, in their false and pretended character of Federal Bureau of Investiga-

tion agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not in ny opinion taking upon themselves to act as Federal Bureau of Investigation agents" (R. 6).

It is plain that the demurrer was sustained for the specific reason that the statutory requirement of false impersonation was not met by the language of the indictment which charged the defendants with falsely posing as Federal Bureau of Investigation agents and demanding of Mrs. Silk the whereabouts of Abe Zaidman. That was the particular construction placed by the District Court on the statute, in ruling the demurrer. It would seem that the sole issue before this Court on this appeal was limited to the singular question, Was the action of the defendants in their false and pretended character of Federal Bureau of Investigation agents, in demanding that Mrs. Silk inform the defendants as to the whereabouts of Abe Zaidman, a taking upon themselves to act as Federal Bureau of Investigation agents, within the meaning and purview of the statute? Upon answering that question, whether it be in the affirmative or in the negative, the jurisdiction of this Court under the Criminal Appeals Act, will have been exhausted. The Government's appeal did not open the whole case, nor was the Court at liberty to consider other objections to the indictment, or questions which might arise at the trial, with respect to the merits of the case (United States v. Borden Co., supra, 193, 206).

The statement in this Court's opinion, that the District Court sustained the demurrer on the ground that the conduct of the defendants, "while highly reprehensible, does not come within the terms of the statute" is a mighty strain upon the context of the District Court's opinion. It is true he made that general observation, but he immediately followed it by a specific reason or ground for sustaining the demurrer as to count one, and an altogether

different reason or ground for sustaining the demurrer as to count two. This general observation or statement of the District Court was accordingly modified by the specific reasons or grounds assigned by him in sustaining the demurrer as to each separate count, and this general statement became merged in such specific statements.

It would seem that this Court was unwarranted in assuming and exercising jurisdiction beyond the strict limitations of the Criminal Appeals Act.

CONCLUSION.

For the foregoing reasons, we respectfully submit that the judgment, decision and opinion of this Court in this case is erroneous, and we urge the Court to grant appellees a rehearing.

Respectfully submitted,

HENRY S. JANON,
Attorney for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 629.—October Term, 1942.

The United States of America, Appellant, *vs.* Philip Lepowitch and Marvin Spector, Appellees.	On Appeal from the District Court of the United States for the Eastern District of Missouri, Eastern Division.

[April 19, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The defendants are charged with impersonating Federal Bureau of Investigation officers and by that means attempting to elicit information from one person concerning the whereabouts of another. They were indicted under 18 U. S. C. § 76, the first branch of which includes two elements: impersonation of an officer of the government and acting as such with intent to defraud either the United States or any person.[1] The District Judge sustained a demurrer to the indictment, holding that the conduct of the defendants, "while highly reprehensible, does not come within the terms of the statute."[2] He apparently concluded that the count of the indictment under consideration did not, within the meaning of the statute, make sufficient allegations either of impersonation or of acting with intent to defraud. Since the decision below was based on a construction of the statute, the case was properly brought here by the government under the Criminal Appeals Act, 18 U. S. C. § 682, and 28 U. S. C. § 345.

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[1] "Falsely pretending to be United States officer.—Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, or under the authority of any corporation owned or controlled by the United States, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper, document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

[2] The indictment contained two counts. The second, based on the same acts of the appellees, was rested on the second branch of the statute and the information sought was said to be the "valuable thing" required by the Act. While insisting here that the second count was not subject to the demurrer, the government does not ask for review of the ruling with reference to it.

Government officials are impersonated by any persons who "assume to act in the pretended character." *United States* v. *Barnow*, 239 U. S. 74, 77. The most general allegation of impersonation of a government official, therefore, sufficiently charges this element of the offense. The validity of this portion of the indictment was not contested here.

We hold that the words "intent to defraud" in the context of this statute, do not require more than the defendants have, by artifice and deceit, sought to cause the deceived person to follow some course he would not have pursued but for the deceitful conduct.[3] If the statutory language alone had been used, the indictment would have been proof against demurrer under *Lamar* v. *United States*, 241 U. S. 103, 116; *Pieree* v. *United States*, 314 U. S. 306, 307; and this indictment has merely been made more elaborate than that in the *Lamar* case by the addition of a description of the nature of the alleged fraud. In any case, this branch of the statute covers the acquisition of information by impersonation although the information may be wholly valueless to its giver. This result is required by *United States* v. *Barnow*, *supra*, 80, in which we held that the purpose of the statute was "to maintain the general good repute and dignity of the [government] service itself", and cited with approval cases which, interpreting an analogous statute, said: "it is not essential to charge or prove an actual financial or property loss to make a case under the statute." *Haas* v. *Henkel*, 216 U. S. 462, 480; *United States* v. *Plyler*, 222 U. S. 15.

The first clause of this statute, the only one under consideration here, defines one offense; the second clause defines another. While more than mere deceitful attempt to affect the course of action of another is required under the second clause of the statute, which speaks of an intent to obtain a "valuable thing", the very absence of these words of limitation in the first portion of the act persuade us that under it, a person may be defrauded although he parts with something of no measurable value at all.

Reversed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice ROBERTS believes that the judgment should be affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

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[3] For a more limited construction of similar words in a different statutory context see United States v. Cohn, 270 U. S. 339.